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JAN 13 1994

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN

10 CHURCH OF SCIENTOLOGY INTERNATIONAL,)
a California not-for-profit)
11 religious corporation,)
12 Plaintiff,)
13 vs.)
14 GERALD ARMSTRONG; MICHAEL WALTON;)
THE GERALD ARMSTRONG CORPORATION,)
15 a California for-profit)
corporation; DOES 1 through 100,)
16 inclusive,)
17 Defendants.)
18

No. 157 680

ARMSTRONG'S OPPOSITION TO
PLAINTIFF'S MOTION TO
COMPEL PRODUCTION FROM HIM
AND MICHAEL WALTON

Date: January 21, 1994
Time: 9:00 a.m.
Dept: 1
Trial Date: 9/29/94

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JAN 13 1994

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7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
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10	CHURCH OF SCIENTOLOGY INTERNATIONAL,)	No. 157 680
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11	religious corporation,)	ARMSTRONG'S OPPOSITION TO
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12	Plaintiff,)	COMPEL PRODUCTION FROM HIM
)	<u>AND MICHAEL WALTON</u>
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)	
14	GERALD ARMSTRONG; MICHAEL WALTON;)	
	THE GERALD ARMSTRONG CORPORATION,)	
15	a California for-profit)	
	corporation; DOES 1 through 100,)	
16	inclusive,)	
)	Date: January 21, 1994
17	Defendants.)	Time: 9:00 a.m.
)	Dept: 1
18)	Trial Date: 9/29/94

19 I. INTRODUCTION

20 The first cause of action in plaintiff's complaint to set
21 aside fraudulent transfers seeks to void the transfer of certain
22 real property in San Anselmo that Gerald Armstrong ("Armstrong")
23 transferred to Michael Walton in 1990.

24 The second cause of action alleges that Armstrong
25 fraudulently transferred \$41,500.00 and \$1,000,000.00 in stock (a
26 value whose basis in fact solely lies in Armstrong's valuation
27 that has no reference to any other benchmark) in The Gerald
28 Armstrong Corporation ("TGAC"). The second cause of action also

1 asks the Court to void such transfers to the extent required to
2 satisfy the judgment that Scientology hopes to obtain. ¹/

3 **II. STATEMENT OF FACTS**

4 Armstrong has factually and adequately responded to all
5 relevant items set forth in Scientology's Second Request for
6 Production that was directed to him. Specifically, he has
7 responded to Requests 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 16,
8 and 17. Thus, any dispute as to those requests is moot.

9 This opposition is directed, therefore, at requests 13, 14
10 and 15.

11 Request 13 seeks all documents reflecting names, addresses
12 and telephone numbers of persons or entities retained to manage,
13 analyze, monitor or keep records of Armstrong's business and
14 financial affairs and assets, including the financial affairs and
15 assets of TGAC from January 1, 1986 to the present.

16 Request 14 seeks all documents reflecting Armstrong's
17 financial condition, business and personal affairs and assets,
18 including the financial affairs and assets of TGAC from January 1,
19 1986 to the present.

20 Request No. 15 requests all documents reflecting the name,
21 address and telephone number of the location at which all your
22 business, personal and banking accounts, including those of TGAC,
23 are located.

24 _____
25 ¹ As previously noted in this litigation, Scientology has
26 two lawsuits pending against Armstrong and TGAC in Los Angeles
27 Superior Court. Both actions are the subject of a stay that was
28 issued by Judge Horowitz in that Court almost one year ago. Said
stay will be lifted once the Second District Court of Appeal
issues its decision on Armstrong's appeal of the preliminary
injunction issued by Judge Sohigian on May 28, 1992.

1 Armstrong has agreed to produce, and by the time of the
2 hearing on the motion will have produced, all documents that are
3 relevant to the subject matter of this litigation as set forth in
4 the first and second causes of action.

5 Gerald Armstrong is a highly unusual individual in that he
6 values his religious calling and concomitant moral principles
7 above all other things in life. What is most unusual about
8 Gerald, and for those of us dependant upon the possessions that
9 life has to offer, strange, if not galling, is his uncompromising
10 dedication to the truth. In the case at bar, Scientology says
11 that Gerald conspired to violate a settlement contract, and, in
12 anticipation thereof, made himself "judgment-proof." Armstrong
13 says that the true and undisclosed purpose of the settlement
14 contract was to allow Scientology to publicly malign his
15 character, and to sue him for breach of contract if and when he
16 fought back.

17 In August 1990, Armstrong became greatly affected by the
18 Persian Gulf Crisis, and asked God for direction as to what he
19 should do. As the result of what he considered to be God's
20 guidance, he gave away almost all of his worldly possessions,
21 which were considerable because he had received a great deal of
22 money from Scientology in December, 1986 to dismiss his lawsuit
23 against it. He gave away his assets free and clear. He does not
24 maintain any shadowy interest in such worldly possessions that he
25 will assert in the unlikely event that Scientology will someday go
26 away. (Declaration of Gerald Armstrong, ¶ 11.) In this regard,
27 Armstrong made a mistake in his verified pleading inasmuch as he
28 denied giving away \$41,500.00 in cash and \$1,000,000.00 in stock

1 in TGAC. (Id. at ¶ 12.) He gave such possessions to Michael
2 Walton, Lorien Phippeny and Michael Douglas. (Ibid.) Armstrong
3 will file a motion to amend his answer shortly.

4 **III. THE DISCOVERY SOUGHT BY REQUESTS 13, 14 AND**
5 **15 SHOULD BE DENIED BECAUSE IT IS PRIVATE, AND**
6 **NOT NECESSARY TO THE DETERMINATION OF THE LAWSUIT**

7 Gerald Armstrong has agreed to and by the time of the hearing
8 will have produced all documents that are relevant to the subject
9 matter of this lawsuit. (Armstrong Decl. at ¶ 10.) He refuses to
10 allow Scientology, to generally comb through his personal
11 financial information. Such information is protected by the
12 constitutionally fundamental right of privacy. Since disclosure
13 of Armstrong's financial information in a general sense is not
14 required in order to sustain or defeat Scientology's first and
15 second causes of action, Armstrong does not have to disclose such
16 general information.

17 Moreover, Scientology has long regarded Armstrong as a
18 "suppressive person" who is subject to its malicious "fair game"
19 policy "which permits a suppressive person to be 'tricked, sued,
20 or lied to or destroyed . . . [or] deprived or property or injured
21 by any means by any Scientologist.'" (Church of Scientology v.
22 Armstrong (1991) 232 Cal.App.3d 1060, 1067.) ^{2/} Thus, the risk
23 of Scientology's abuse of whatever Armstrong's financial it is
24 able to obtain is dramatically increased.

25
26 ² In executing the "fair game" policy on Armstrong,
27 Scientology has, inter alia, had him assaulted by one of its
28 investigators, then assaulted by an automobile driven by such an
investigator, then attempted to involve him in an auto "accident"
on the freeway. (Ibid.)

1 A. **The Discovery Of Financial Information**
2 **Must Be Narrowly Circumscribed In Order**
3 **To Maximum Protection To Armstrong's Privacy**

4 Article 1, section 1 of the California Constitution
5 declares that the right to privacy is inalienable. It is a
6 "fundamental interest" that is essential to the rights "guaranteed
7 by the First, Third, Fourth, Fifth and Ninth Amendments to the
8 U.S. Constitution." (City of Santa Barbara v. Adamson (1980) 27
9 Cal.3d 123, 130.) The right to privacy is not, however, absolute;
10 it may be abridged when, but only when, there is a compelling and
11 opposing state interest. (Board of Trustees v. Superior Court
12 (1981) 119 Cal.app.3d 516, 525.) Of course, state interest, lies
13 in "facilitating the ascertainment of truth in legal proceedings."
14 (Britt v. Superior Court (1978) 20 Cal.3d 844, 857.)

15 When the right to disclosure of information conflicts with
16 the constitutional right to privacy, there should be a "careful
17 balancing" of the "compelling public need" for discovery, against
18 the "fundamental right of privacy." (City and County of San
19 Francisco v. Superior Court (1981) 125 Cal.App.3d 879, 823.) Even
20 where the balance, because of a "'compelling state purpose,'"
21 weighs in favor of disclosure of private information, the scope of
22 such disclosure will be narrowly circumscribed; such an invasion
23 of the right of privacy "must be drawn with narrow specificity."
24 (Ibid. quoting Britt, supra., 20 Cal.3d at 856.)

25 Before the Court orders disclosure, it must carefully balance
26 the compelling public need for discovery against the fundamental
27 right of privacy. (City of Santa Barbara v. Adamson, supra., 27
28 Cal.3d at 130.) It is essential "that the compelled need for
disclosure be narrowly drawn to assure maximum protection of the

1 constitutional interests at stake." (Britt v. Superior Court,
2 supra., 20 Cal.3d at 859.) The possibility that irrelevant
3 information might lead to relevant information is not enough.
4 "[I]nquiry into one's private affairs will not be constitutionally
5 justified simply because inadmissible, and irrelevant, matter
6 sought to be discovered might lead to other, and relevant
7 evidence." (Board of Trustees, supra, 119 Cal.App.3d at 525.)
8 "When compelled disclosure intrudes on constitutionally protected
9 areas, it cannot be justified solely on the ground that it may
10 lead to relevant information." (Morales v. Superior Court ()
11 99 Cal.App.3d 283, 289; see also Shelton v. Tucker (1960) 364
12 U.S. 479, 483-485; Fults v. Superior Court (1979) 88 Cal.App.3d
13 899, 904.) "... [E]ven when discovery of private information is
14 found directly relevant to the issues of ongoing litigation, it
15 will not be automatically allowed." (Board of Trustees, supra.,
16 119 Cal.App.3d at 525.) "This constitutional principle denies the
17 validity of the dragnet in order that fundamental liberties are
18 not subordinated to mere convenience... Simple speculation that an
19 answer may uncover something helpful is not enough." (Fults v.
20 Superior Court, supra., 88 Cal.App.3d at 904-905.) "[A]n adequate
21 foundation for inquiry must be laid before proceeding in such a
22 manner as will substantially intrude upon . . . constitutionally
23 activities." (Gibson v. Florida Legislative Comm. (1963) 372 U.S.
24 539, 557.)

25 The right to privacy extends to one's confidential financial
26 affairs. (Valley Bank of Nevada v. Superior Court (1975) 15
27 Cal.3d 652, 656.) Finally, where, as in the case at bar, "the
28 financial information goes to the heart of the cause of action

1 itself, a litigant should not be denied access so easily." (GT,
2 Inc. v. Superior Court (1984) 151 Cal.App.3d 748, 754 [discussing
3 disclosure of financial data in the context of punitive damages
4 discovery].) Thus, where the documents a party seeks are
5 "fundamental to his case", disclosure should be ordered.
6 (Rawnsley v. Superior Court (1986) 183 Cal.App.3d 86, 91.)

7 In the case at bar, further discovery should not be ordered
8 because Armstrong has agreed to produce all documents that are
9 fundamental to Scientology's case, but objects to the wholesale
10 disclosure of all his financial records as unnecessary to a fair
11 resolution of the litigation.

12 B. Since Armstrong Has Agreed To Disclose
13 All Documents Directly Relevant To The
14 Complaint, His Right To Privacy Should
Prevent His Disclosure Of Generalized
Financial Information

15 Armstrong has agreed to disclose all documents that he
16 possesses which are relevant to Scientology's accusation that he
17 fraudulently conveyed his interest in the house on Fawn Drive
18 (first cause of action) and \$41,500.00 and \$1,000,000.00 (second
19 cause of action). Scientology wants in addition to this all
20 documents having to do with the financial condition, bank
21 accounts, and financial advisors of both Armstrong and his
22 corporation. Such generalized disclosure is clearly unnecessary.

23 ... [P]rotection is given to sensitive
24 information which people may wish to keep
25 confidential, such as their financial dealings
(see e.g. Valley Bank of Nevada v. Superior
26 Court (1975) 15 Cal.3d 652...) and assets (see
27 e.g., Richards v. Superior Court (1978) 86
28 Cal.App.3d 265...) "Where objection is made
to discovery of such sensitive information in
the trial court, the court must carefully
weigh the competing factors in fashioning an
order, considering: '... the purpose of the

1 information sought, the effect that disclosure
2 will have on the parties and on the trial, the
3 nature of the objections urged by the party
4 resisting disclosure, and ability of the court
5 to make an alternative order which may grant
6 partial disclosure, disclosure in another
7 form, or disclosure only in the event that the
8 party seeking the information undertakes
9 certain specified burdens which appear just
10 under the circumstances. [Citations omitted.]
11 Where the court abuses its discretion in
12 applying this balancing test and fashioning
13 its order, relief is available by writ of
14 mandate.

15 (Hofmann Corp. v. Superior Court (Smaystrla) (1985)172 Cal.App.3d
16 357, 362.)

17 Since Armstrong has agreed to disclose the documents that are
18 pertinent to the subject matter of the complaint, the purpose of
19 the remaining requests, at best, is simply to comb through
20 Armstrong's finances in the hopes that something will turn up. At
21 worst, the purpose would be to use the information that would be
22 found as a result of Scientology's rummaging around in Armstrong's
23 financial affairs to hurt Armstrong in further application of the
24 fair game policy. Armstrong is reasonable and will produce that
25 which is relevant to the lawsuit. He is not willing, however, to
26 give Scientology carte blanche to make his life as miserable as it
27 can. Such is not a legitimate purpose of discovery.

28 Armstrong has recognized his duty as a defendant to produce
relevant documents and has agreed to do so. In light of this, the
scope of disclosure must be "narrowly circumscribed" and "drawn
with narrow specificity . . . only to the extent necessary for a
fair resolution of the lawsuit." (Moskowitz v. Los Angeles County
Superior Court (1982) 137 Cal.App.3d 313, 316.) General financial
discovery should be prohibited.

1 C. Armstrong Should Be Accorded Maximum Protection
2 In Order To Prevent Discovery From Being Used
3 As An Implement Of The Fair Game Policy

4 As noted above, Gerald Armstrong has been designated a
5 "suppressive person" who by virtue of said label is subject to the
6 "fair game" policy. One tactic of implementing the fair game
7 policy is the use of litigation.

8 Scientology embraces the use of litigation to harass its
9 opponents. Its founder, L. Ron Hubbard, has described this
10 practice as follows:

11 The purpose of the suit is to harass and discourage rather
12 than to win. [¶] The law can be used very easily to harass,
13 and enough harassment on somebody who is simply on the thin
14 edge anyway...will generally be sufficient to cause his
15 professional decease. If possible, of course, ruin him
16 utterly. ^{3/}

17 Armstrong is still considered to be fair game. (Exhibit C to
18 Armstrong Declaration.)

19 In light of Scientology's history of attacking Armstrong, and
20 desire to rummage through his financial affairs, it is
21 respectfully submitted that the Court should give great weight to

22 ³ From L. Ron Hubbard, The Technical Bulletins of
23 Dianetics and Scientology, Volume II, p. 157. A copy of the
24 relevant portion of this document is attached as Exhibit A to, and
25 is authenticated by Armstrong's Declaration submitted herewith.

26 Top Scientology official Jane Kember, in an internal
27 Scientology document, explained that Scientology's legal strategy
28 in the U.S. is to use litigation as a financial club:
"The button used in effecting settlement is purely financial. In
other words, it is more costly to continue the legal action than
to settle in some fashion. ... [¶] Therefore, it is imperative
that legal US Dev-T his opponents and their lawyers with
correspondence (a lawyer's letter costs approx \$50), phone calls
(time costs), interrogatories, depositions and whatever else legal
can mock up. [¶] One of the bright spots of US legal is that
even if you lose you don't pay your opponent for his lawyers
fees." A copy of the document containing this statement is
attached as Exhibit B to, and is authenticated by, Armstrong's
Declaration. The phrase "Dev-T" is a term which Scientology uses
to mean to cause someone to do unnecessary work. (Id.)

1 the constitutional directive that disclosure be ordered only with
2 narrow specificity.

3 **D. If There Is Any Further Disclosure,**
4 **It Should Be Subject To A Protective Order**

5 Most of the case law which pertains to the discovery of
6 financial information is found in the context of a claim for
7 punitive damages. Nonetheless, the principles set forth in that
8 context are also applicable to the circumstances of the case at
9 bar.

10 Discovery seeking financial information by
11 reason of a claim for punitive damages is one
12 classic instance of the manner in which civil
13 discovery is used to achieve a litigation
14 advantage never contemplated when the
15 methodology was introduced into pretrial
16 procedure [T]here is usually the
17 potential that untoward disclosure of the
18 information obtained may in some way or other
19 react adversely against the disclosing party
20 for reasons totally unrelated to the lawsuit.
21 The possibilities run all the way from greater
22 exposure to the not so gentle solicitations of
23 some charitable organization to the
24 possibility of damage to the discloser in the
25 competitive business arena. ... [¶] ... It
26 seems a rare instance indeed that the
27 potential of disclosure for purposes unrelated
28 to the lawsuit or to persons other than
counsel and their representatives serves any
purpose except to give a tactical edge to the
party who has obtained discovery of the
information by allowing that party the benefit
of pressure in settlement negotiations by
threat or implication of disclosure."

(Richards v. Superior Court, supra., 86 Cal.App.3d at 271-272.)

24 The above stated principle does not even comprehend the
25 possibility that is presented by the "fair game" policy: that
26 litigation would be used for vindictive and destructive purposes.

27 Scientology counsel, Laurie Bartilson, is a Scientologist.
28 (Declaration of Ford Greene) Therefore, she is subject to the

1 "ethics" practices of Scientology and is subject to being jailed
2 in Scientology's prison, the Rehabilitation Project Force ("RPF").
3 ^{4/} (Armstrong Declaration, at ¶ 9.) Since Armstrong has been
4 labelled a "suppressive person" and is subject to "fair game,"
5 which allows Bartilson to "lie" in order to harm Armstrong, her
6 word that she would not disclose any financial information cannot
7 be trusted.

8 Therefore, should any further disclosure be ordered,
9 disclosure should be limited to Mr. Wilson who should be ordered
10 not to disclose the same to his client, to Ms. Bartilson or to any
11 of his client's agents. This must be done in order to protect
12 Armstrong from such disclosure being used for a retributive
13 purpose in application of the "fair game" policy. (Id. 212
14 Cal.App.3d at 888-889.)

15 Finally, Armstrong requests that any further production
16 ordered should be made only after an in camera review by the
17 Court.

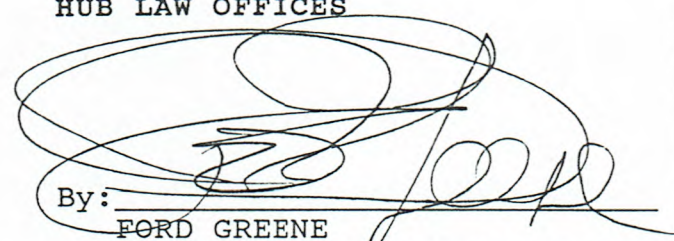
18 IV. CONCLUSION

19 Base upon the foregoing points and authorities, Gerald
20 Armstrong respectfully submits that he has completely and fairly
21 complied with all discovery and that Scientology's motion to
22 compel should be denied.

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27 ⁴ See also Wollersheim v. Church of Scientology (1989)
28 212 Cal.App.3d 872, 880-881, 260 Cal.Rptr. 331, affirmed on these
matters (1992) 3 Cal.App.4th 1290, 6 Cal.Rptr.2d 532 fn.1.

1 DATED: January 13, 1994

HUB LAW OFFICES



By: FORD GREENE
Attorney for Defendants and
GERALD ARMSTRONG
and THE GERALD ARMSTRONG
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1 PROOF OF SERVICE

2 I am employed in the County of Marin, State of California. I
3 am over the age of eighteen years and am not a party to the above
4 entitled action. My business address is 711 Sir Francis Drake
5 Boulevard, San Anselmo, California. I served the following
6 documents: ARMSTRONG'S OPPOSITION TO PLAINTIFF'S MOTION TO
7 COMPEL PRODUCTION FROM HIM AND MICHAEL WALTON;
8 OPPOSING PARTIES' EVIDENCE IN OPPOSITION

9 on the following person(s) on the date set forth below, by placing
10 a true copy thereof enclosed in a sealed envelope with postage
11 thereon fully prepaid to be placed in the United States Mail at
12 San Anselmo, California:

13 MICHAEL WALTON, ESQ.
14 707 Fawn Drive
15 San Anselmo, CA 94960

16 Andrew Wilson, Esquire
17 WILSON, RYAN & CAMPILONGO
18 235 Montgomery Street, Suite 450
19 San Francisco, California 94104

20 LAURIE J. BARTILSON, ESQ.
21 Bowles & Moxon
22 6255 Sunset Boulevard, Suite 2000
23 Los Angeles, California 90028

24 [X] (By Mail) I caused such envelope with postage thereon
25 fully prepaid to be placed in the United
26 States Mail at San Anselmo, California.

27 [] (Personal) I caused said papers to be personally service
28 on the office of opposing counsel.

[X] (State) I declare under penalty of perjury under the
laws of the State of California that the above
is true and correct.

DATED: January 13, 1994

